

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DANIEL JEROME BOWEN,

Plaintiff,

v.

E. SULLIVAN, M.D., PCP; E.
GOLDEN, R.N.; V. BROWN, CRN
II; M. SEPULVEDA, M.D., CME;
GERALD ELLIS, CEO, Salinas
Valley State Prison; and L. D.
ZAMORA, Chief, California Prison
Health Services,

Defendants.

No. C 11-6285 PJH (PR)

**ORDER DISMISSING
COMPLAINT WITH LEAVE
TO AMEND**

Plaintiff, an inmate at Salinas Valley State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." Although in order to state a claim a

1 complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide
 2 the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a
 3 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations
 4 must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v.*
 5 *Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough
 6 facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States
 7 Supreme Court has explained the “plausible on its face” standard of *Twombly*: “While legal
 8 conclusions can provide the framework of a complaint, they must be supported by factual
 9 allegations. When there are well-pleaded factual allegations, a court should assume their
 10 veracity and then determine whether they plausibly give rise to an entitlement to relief.”
 11 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Complaints in pro se prisoner cases, such as
 12 this one, must be liberally construed in favor of the plaintiff when applying the
 13 *Twombly/Iqbal* pleading standard. *Hebbe v. Miller*, 627 F.3d 338, 341-42 (9th Cir. 2010).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 15 elements: (1) that a right secured by the Constitution or laws of the United States was
 16 violated, and (2) that the alleged deprivation was committed by a person acting under the
 17 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 **B. Legal Claims**

19 Plaintiff says that he has a serious back problem that makes it very painful for him to
 20 “prone out,” i.e., lie face-down, on hard surfaces for extended periods. He says that
 21 defendant Sullivan wrote an “accommodation chrono” (memo) excusing him from doing so,
 22 but an unknown superior (“HCM/CMO”) denied the accommodation. His only allegation
 23 against Sullivan is that he or she granted the accommodations; he has failed to state a
 24 claim against Sullivan.

25 Plaintiff filed an appeal of the denial. He says he was interviewed by defendant
 26 Golden, who recommended the accommodation he sought be granted. This is the only
 27 allegation against Golden; he has failed to state a claim against him or her. He was
 28 informed by defendant Brown of Golden’s recommendation; that being the only allegation

1 against Brown, he has failed to state a claim against him or her.

2 Plaintiff responded by pointing out that he needed a chrono reflecting the
3 conclusions of Golden and Brown that the accommodation should be afforded him. At that
4 point defendant Ellis denied his appeal altogether. Plaintiff then appealed to the director's
5 level, and was informed by defendant Zamora that his appeal was "being forwarded" to the
6 Health Care Coordinator at his prison. Seven months later he had heard nothing further.
7 He has been forced to resume "proning out" on hard surfaces, suffering pain. He has
8 stated claims against Ellis and Zamora, who as a result of the appeal were aware of his
9 purported serious medical need and arguably were deliberately indifferent to it.

10 Plaintiff does not mention defendant Sepulveda, so of course has not stated a claim
11 against him or her. The claim against Sepulveda will be dismissed with leave to amend.

12 CONCLUSION

13 1. Plaintiff's claims against defendants Sullivan, Golden and Brown are **DISMISSED**
14 with prejudice. The claim against Sepulveda is **DISMISSED** with leave to amend within
15 twenty-eight days of the date of this order. If plaintiff chooses to amend, he should note
16 than an amended complaint completely replaces the original complaint, and thus that he
17 should include all claims he wishes to pursue, including those found sufficient here. See
18 *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). If plaintiff does not amend,
19 the case will proceed against Ellis and Zamora.

20 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
21 court informed of any change of address by filing a separate paper with the clerk headed
22 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.

23 **IT IS SO ORDERED.**

24 Dated: July 31, 2012.



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PHYLLIS J. HAMILTON
United States District Judge

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